JOHORE REPORTS.

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

March 26, 1939.

TOH AH MOH & ANOR.....Chargees

v.

UNGKU ABDULLAH BIN MOHAMED..... Chargor

[JOHORE BAHRU ORIGINATING SUMMONS No. 58 of 1938]

Land Enactment, (Cap. 1) Sec. 68 (ii) — Charges—proceedings in case of default—Costs —principle of taxation.

Upon summons taken out by chargees calling upon a chargor before the Court to show cause why the land subject to the charge should not be sold by public auction, under Section 68 of the Land Enactment (Cap. 1), the Court ordered that the chargor do pay the costs of the proceedings.

Held, that such costs should be taxed as between party and party.

S. K. Das for the Chargees.

S. G. Pillay for the Chargor.

Cur. Adv. Vult.

MILLS, J.—In this originating summons chargees by summons call a chargor before the Court to show cause why the land subject to the charge should not be sold by public auction, under section 68 of the Land Enactment. The chargor must pay the costs of the proceedings. The only question is whether they should be taxed as between party and party, or as between solicitor and client.

The law of Johore contains no express provision on the point. The Civil Procedure Rules do not apply to proceedings under the Land Enactment, and no rules prescribing the procedure to be taken under Section 68 of the Enactment have been made under Section 19 (xii).

I should be guided by Rules 42 and 46 of The Land Rules, 1929, if I thought they laid down a rule to be followed in proceedings before the Collector: but I think the expression "all costs" as used in those two rules must be interpreted as meaning "all costs properly incurred" (cf. *National Provincial Bank of England* v. *Games*, 31 Ch. D. at page 592), and as it will be for the taxing master, and eventually for the Court, to say what is properly incurred, the expression "all costs" does not, in my opinion, take the matter any further.

In the absence of any provision in the law of Johore, I must follow the opinion of the Privy Council and have regard to the English law (cf. *Abdullah Bey Chedid* v. *Tenenbaum*, A.I.R. 1934 P.C. at page 92).

In England the costs of legal proceedings are taxed as between party and party: though formerly the mortgagee was allowed solicitor and client costs (*Halsbury's* Laws of England. 2nd edition. Vol. XXIII. page 406).

The present rule is clearly stated in *In re Queen's Hotel Company, Cardiff, Limited* (1900. 1 Ch. at p. 794), and in the Court of Appeal the reasoning of Cozens-Hardy J. was described as "quite irresistible" (*In re New Zealand Midland Railway Company*, (1901) 2 Ch. at page 370). In my opinion it is impossible to give a chargee in Johore greater privileges than a mortgagee is given in England.

My decision must be that costs are to be taxed as between party and party.

Solicitors for the chargee—*Braddell Bros.*

Solicitors for the chargor—*S. G. Pillay.*

[REVISIONAL CIVIL JURISDICTION]

MILLS, J.

March, 29, 1939

CHAN KEE BENG.....Defendant (Applicant)

v.

RAMASAMY NAIDU....Plaintiff (Respondent)

[BATU PAHAT ORIGINATING PETITION No. 2 of 1938]

Courts Enactment, Sec. 56—value of subject-matter of suit exceeding $100—judgment recovered for $100—whether appeal lies to the Court of a Judge.

The plaintiff respondent sued the defendant applicant for $250 in the Court of the Magistrate at Batu Pahat but obtained judgment for $100. The defendant applicant applied to the Court of a Judge to call for the record and pass an order under Section 56 of the Courts Enactment (Cap. 54).

Held, that inasmuch as the amount claimed by the plaintiff respondent exceeded $100 an appeal lay from the decision of the Magistrate.

ORIGINATING PETITION.

S. K. Das for the Applicant.

S. C. MacIntyre for the Respondent.

Cur. Adv. Vult.

MILLS, J.—In Civil Suit No. 145 of 1938, the plaintiff claimed $250 damages in the Court of the Magistrate at Batu Pahat.

The Magistrate gave judgment for $100 in favour of the plaintiff.

The defendant applies to the Court of a judge to call for the record and pass an order under Section 56 of the Courts Enactment.

The plaintiff takes the objection that the proper procedure was for the defendant to appeal.

The defendant contends that, under Section 56, he is precluded from appealing because the amount in dispute is only $100: he quotes the case of *H. D. Marthalis* v. *H. G. H. Bartlett* (1 F.M.S.L.R. p.350), in which it was held that no appeal lies if the amount or value of the subject-matter of the appeal does not exceed $100.

In that case Earnshaw, J. C. was construing Section 2 of the Courts Amendment Enactment, 1908: I am unable to procure a copy of that Enactment in Johore, and though the editor of the Reports has noted that the above section is reproduced in Section 56 of the Courts Enactment, 1918, there are reasons for thinking that there is a variation in the language used.

Under the circumstances, I cannot attach weight to the decision of Earnshaw, J.C.

I must interpret Section 56 of the Johore Courts Enactment as I find it.

I have no hesitation in construing Section 56 to mean this, "If the amount or value of the subject-matter of any civil suit does not exceed $100, no appeal shall lie."

That is, I hold that the determining factor is not the amount or value of the subject-matter of the appeal, but the amount or value of the subject-matter of the civil suit. I feel fortified in this view by reason of the language used in Section 17 "No appeal shall be brought to the Court of appeal in any of the following cases:—

(a) where the amount or value of the subject-matter of the suit is less than five hundred dollars."

It would be curious if in the one case the determining factor were the amount of the subject-matter of the appeal, and in the other case the amount of the subject-matter of the suit.

In the present instance, I rule that since the amount claimed in the civil suit exceeded $100, an appeal will lie: and that if the defendant is dissatisfied with the Magistrate's judgment, the proper course for him to adopt is to appeal to the Court of a judge.

I extend the time for appealing until 14 days after this judgment is read.

Order Accordingly.

Solicitor for the Applicant—*S. Fung.*

Solicitors for the Respondent—*Pillai & Co.*